No. 07-876

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

JOHN L. CORRIGAN,

Petitioner,

v.

UNKNOWN KING COUNTY DEPUTY, #1, et al.,

Respondents.

On Petition For Writ of Certiorari To The Ninth Circuit Court of Appeals

BRIEF IN OPPOSITION

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REASONS TO DENY THE PETITION FOR CERTIORARI

Petitioner Corrigan has failed to establish any legal or factual basis which would qualify this case for review on a Writ of Certiorari. As set forth below, the Ninth Circuit Court of Appeals properly reviewed and analyzed the district court's decision to order sanctions against Corrigan for violation of Rule 11 of the Federal Rules of Civil Procedure. (See Petition for Writ of Certiorari, hereafter "Petition," at Appendix 34-35). The court of appeals correctly held the district court did not abuse its discretion in finding Rule 11 had been violated by Corrigan and, after providing notice and a reasonable opportunity to be heard, imposing an appropriate sanction to deter future violations. *Id.* at 19-33.

The Petition fails to meet the criteria for the granting of a Writ of Certiorari. The Petition does not establish the decision of the Ninth Circuit Court of Appeals decided an important question of federal law that has not been, but should be, settled by this Court or that the decision regarded an important federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. R.10(c). Further, the Petition should be denied as Corrigan has not shown the questions presented would resolve any conflict in decisions among the United States Court of Appeals, nor has he shown the Ninth Circuit Court of Appeals has decided any important federal question in a way which conflicts with any decision of a state court of last resort. *Id.* The Petition also fails to establish the

court of appeals decision "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Sup. Ct. R.10(a). In essence, there is no compelling reason for granting the Petition.

A. Statement of the Case

Respondents Adams County, Adams County Sheriff Barger, and Unknown Adams County Official (hereafter collectively "Adams County") provide the following clarification of facts and procedural history regarding the issues raised in the Petition. Sup. Ct. R.15(2). This matter arises from Corrigan's conviction of a misdemeanor in Adams County, State of Washington for refusing to sign a traffic infraction. Corrigan exhausted all available appeals in the Washington State judicial system, up through the state supreme court, in requesting his misdemeanor conviction be overturned and by filing petitions for *habeas corpus*, all of which were denied. Corrigan also petitioned the United States Supreme Court, asserting his conviction for failure to sign a Notice of Traffic Infraction was in violation of the Fourth, Fifth, and Eighth Amendments of the U.S. Constitution. His Petition for Writ of Certiorari was denied. Corrigan also filed a civil action in the United States District Court in the Eastern District of Washington against Respondents, the state court judge which imposed his sentence, the deputy prosecuting attorney who prosecuted the misdemeanor as well as

Washington State Patrol troopers, complaining of various statutory and civil rights violations. Summary judgment was granted on his claims by the district court. The Ninth Circuit Court of Appeals affirmed the decision.

Even in the wake of every court denying his appeals and motions, Corrigan failed to serve the sentence imposed for the criminal conviction. As a result, the Adams County Court issued a lawful warrant for his arrest. Adams County forwarded the lawful warrant to King County, Washington, where Corrigan resided. Corrigan was subsequently arrested on the warrant. The arrest and conviction of Corrigan were ultimately determined to be lawful. Likewise, the warrant and incarceration of Corrigan based on the misdemeanor conviction were also upheld as lawful.

Despite the dismissal of civil rights claims in the Federal District Court of the Eastern District of Washington, Corrigan then filed another suit against Adams County in the District Court of the Western District of Washington. This lawsuit reasserted the claims that were previously dismissed.

On March 9, 2006, Adams County's counsel mailed a copy of the County's proposed Motion for Rule 11 Sanctions, the County's Memorandum of Authorities in Support of the Motion for Rule 11 Sanctions, and a cover letter advising Corrigan that pursuant to Federal Rules of Civil Procedure Rule 11(c)(1), that if his Complaint was not dismissed as to

Adams County within the 21-day safe harbor provision, the Motion and Memorandum would be filed with the court. These materials were provided via U.S. Postal Service, certified mail with return receipt requested. On March 18, 2006, Corrigan verified receiving these materials via his signature on the registered mail receipt.

More than 21 days passed from Corrigan providing verified receipt of Adams County's Motion for Rule 11 Sanctions and the Memorandum of Authorities in Support of said Motion, with Corrigan taking no action to dismiss his Complaint or provide any reply whatsoever. On April 28, 2006, pursuant to Rule 11(c), Adams County filed its Motion for Rule 11 Sanctions and Memorandum of Authorities with the court. By *separate* motion, Adams County also moved the court for an Order of Summary Judgment dismissing all claims against Adams County. To promote judicial economy, and pursuant to local court rule, both motions were scheduled to be heard on the same day.

On May 22, 2006, Corrigan filed his response to the Motion for Summary Judgment and the Motion for Sanctions. Corrigan chose to combine his response to each motion in one brief.

On August 2, 2006, the district court issued its Order on Adams County Defendants' Motions for Summary Judgment and for Rule 11 Sanctions. (See Petition Appendix, pp. 1-29). In that Decision, the district court granted the Motion for Summary

Judgment dismissing all claims by Corrigan against Adams County. The court granted, in part, Adams County's Motion for Rule 11 Sanctions. The court mandated that within 30 days of its Order, Adams County was to file a Motion documenting the reasonable attorney's fees they incurred as a result of the Rule 11 violations found by the court. The court specifically allowed Corrigan to "offer evidence relevant to determine an appropriate sanction, including but not limited to his financial status and his legal training or lack thereof." *Id.* at 29. As directed by the court, Adams County filed its Motion and Materials for Specific Sanctions on August 17, 2006. Corrigan filed a Response, on August 30, 2006.

On October 27, 2006, the court issued an Order on Adams County Motion Seeking Specific Sanctions, granting the motion in part, and denying it in part. Specifically, the court declined to impose Adams County's requested sanction amount of $18,070.41, and instead the court found, "that a monetary sanction of $10,000 should be sufficient to deter Plaintiff from filing frivolous claims in the future." *Id.* at 32. It should be noted Corrigan has failed to include the complete Order of the court on Adams County's Motion Seeking Specific Sanctions in the Petition's Appendix.

B. The Ninth Circuit Court of Appeals Did Not Depart From the Accepted and Usual Course of Judicial Proceeding in Affirming the Sanctions Against Corrigan.

In reviewing the District Court's Orders regarding Rule 11 violations and sanctions, the appellate court correctly applied an abuse of discretion standard regarding all aspects of the district court's decisions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 399, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990).

Adams County properly provided Corrigan with a thorough brief explaining why his claim did not have any legal or factual basis. This authority was provided to Corrigan more than 21 days before Adams County filed its Motion for Rule 11 Sanctions, in compliance with Rule 11(c)(1). Despite being provided this Motion, Memorandum of Authorities, and cover letter explaining their significance, Corrigan refused to dismiss any of his causes of action against Adams County. Instead, Corrigan filed a response contesting the Motion.

Despite Corrigan's disagreement with the award of sanctions, it is clear the District Court judge did not abuse her discretion when analyzing each of the factors set forth in the Advisory Committee notes to the 1993 amendments to Rule 11. (See Petition Appendix pp. 19-29). The court noted that a valid arrest warrant was issued after Corrigan had been convicted and sentenced. Given this conviction and the validity of the warrant, the judge concluded there was

no legal basis for the various causes of action being pursued by Corrigan. The court of appeals correctly found no abuse of discretion had occurred and affirmed the district court decisions.

C. Corrigan's Due Process Claim is Not Supported by Fact or Law and Does Not Constitute a Compelling Reason for Review by Writ of Certiorari.

Corrigan has failed to provide any legal authority or factual argument to support his contention his due process rights were violated by the district court or the court of appeals. First, Corrigan provides irrelevant arguments distinguishing between what he termed in his Petition as Sanc'ion I and Sanction II. (See Petition at pp. 7-8.) Sanction I, arising from his first suit which was filed in the Eastern District of Washington, verifies Corrigan's civil action against Adams County, including the judge imposing his criminal sentence, was frivolous. The sanctions were only overturned by the Ninth Circuit because Adams County, in that instance, failed to comply with the 21-day safe harbor provision. It is undisputed the 21-day safe harbor provision was complied with regarding the sanctions at issue in the Petition before this Court.

Corrigan's claim the district court improperly denied him due process by combining both the Summary Judgment Motion with the Rule 11 Motion is a mischaracterization of the facts and the procedural

record of the case. The Motion for Rule 11 sanctions, along with its Memorandum of Authorities in Support of said Motion, and Affidavit verifying compliance with the 21-day safe harbor of Rule 11(c)(1) were separate pleadings and filings. Subsequent to the 21-day safe harbor passing, and Corrigan taking no action to dismiss his Complaint as requested, the Motion for Summary Judgment, along with its accompanying Memorandum of Authorities in Support of said Motion, were also filed with the Court. Corrigan has never denied receiving the separate motions and in fact filed a responsive brief, choosing to combine his response to both motions in one brief.

Due process requires notice and the opportunity to be heard. The Tenth Circuit has held "the basic requirements of due process with respect to the assessment of costs, expenses, or attorney's fees are notice that such sanctions are being considered by the court and a subsequent opportunity to respond." *Dominion Video Satellite, Inc. v. Echostar Satellite, LLC*, 430 F.3d 1269, 1279 (10th Cir. 2005), citing *Braley v. Campbell*, 832 F.2d 1504, 1510 (10th Cir. 1987). In regard to a Rule 11 Motion for Sanctions, the moving party provides all the due process owed to the opposing party when the safe harbor requirements of Rule 11 are complied with. *Holgate v. Baldwin*, 425 F.3d 671, 678 (9th Cir. 2005). Further, Rule 11 sanctions do not violate a party's right to due process on the grounds of lack of notice or opportunity to be heard when the offending party had notice of the Motion for Rule 11 sanctions and had an opportunity to be heard

by opposing the Motion. *Int'l Ore & Fertilizer Corp. v. SGS Control Svcs., Inc.*, 38 F.3d 1279, 1286 (2nd Cir. 1994).

In the case at bar, there is no dispute or contention by Corrigan that the safe harbor provisions of Rule 11(c)(1) were not complied with in this case. Adams County, in seeking Rule 11 sanctions, did not combine its Motion or briefing with the Motion for Summary Judgment into one filing. Two separate motions and two separate memorandums of authorities and supporting affidavits were filed with the court. Corrigan provided a brief in response to the Summary Judgment Motion and for the Motion for Rule 11 Sanctions. Upon receiving the trial court's Order finding Rule 11 had been violated by Corrigan, the court then provided notice and an opportunity to be heard in determining an appropriate sanction. (See Petition Appendix at 28-29, 33). Corrigan again filed responsive documents to Adams County's Motion in Support of Specific Sanctions being entered.

Corrigan received all the due process owed to him by Adams County satisfying the safe harbor requirements of Rule 11. *Holgate*, 425 F.3d at 678. The mere fact of Corrigan filing responsive briefs to the Motion for Rule 11 Sanctions and the Motion for Specific Sanctions eliminates any other due process argument Corrigan may have. *Int'l Ore & Fertilizer Corp.*, 38 F.3d at 1286.

Corrigan has failed to cite any authority which supports his claim that due process has been violated

in this case. The very purpose of the Federal Rules of Civil Procedure is to "secure the just, speedy, and inexpensive determination of every action." F.R.C.P. Rule 1. Scheduling a Motion for Rule 11 Sanctions and a separate Motion for Summary Judgment to be heard on the same hearing date, within the time frames of both Rule 11 and Rule 56, does not violate due process.

Corrigan's Petition fails to provide any compelling reason for this Court to hear this case on a Writ of Certiorari.

CONCLUSION

For the foregoing reasons, Adams County respectfully requests this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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[1] Mr. Harwood's Application for Admission to the U.S. Supreme Court Bar has been filed and is currently pending with the Clerk of the Court.